HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 765 (MS) OF 2001
(Old No. 34365/96)

Smt. Manorama Agarwal,
W/o Sri Prem Kumar,
R/o Mahabirganj, Haldwani,
Nainital. .....Petitioner.

Versus

1. The Chief Controlling Revenue Authority,
   Board of Revenue, U.P., Allahabad.
2. Additional District Magistrate (Finance & Revenue),
   Nainital. .....Respondents.

Dated: 19.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi, Advocate for the petitioner, Standing Counsel for the State of U.P. and Standing Counsel for the State of Uttaranchal.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 14.08.1996 (Annexure No. 8 to the writ petition) and 31.03.1994 (Annexure No. 7 to the writ petition) passed by the respondent no. 1 and 2 respectively by which the notices under Section 47-A of the Indian Stamps Act was issued and the same having been challenged by the petitioner before the Revisional Court regarding the stamp duty.

3. Briefly stated, according to the petitioner, he has purchased the property 12X36 in a lane known as Rassi Gali, at Haldwani, Nainital for a consideration of Rs. 70,000/- for residential purposes.

4. According to the petitioner, notice was issued under Section 47-A (2) of the Indian Stamps Act on the ground that the locality being commercial and the petitioner is required to pay the stamp duty on the value of Rs. 4 per square feet and therefore, the value of the land and building was estimated to the extent of Rs. 40,148/- and 5,18,400/- total Rs. 5,58,548. The stamp duty was found to be deficient to the extent of Rs. 79,90,5000.

5. Tehsildar inspected the property in dispute and thereafter submitted his report stating that the disputed is away from the main-road. The report is quoted below:

"1. प्रश्नगत भूमि/भवन/मुख्य मार्ग से हटकर है।

2. प्रश्नगत भूमि पर भवन है जो अतिरिक्त है।

3. प्रश्नगत भूमि रेलवे स्टेशन से बरेली रोड को पड़ता है तथा 1/2 कि0मी0 की दूरी पर है।

4. प्रश्नगत भूमि में बाग व कृषि नहीं की जा रही है उसमें टीनशेड का भवन निर्मित है जो काफी पुराना खस्ता हालत में है तथा उक्त भवन को किराये पर नहीं उठाया गया है।

5. प्रथम भूखण्ड पर निर्मित टीनशेड 12X 36 फीट अर्थात 432 वर्ग फुट होता है जिसके वर्ग मीटर 40. 14 होते हैं प्रश्नगत भूखण्ड व्यवसायिक प्रयोज्य में लाया जा रहा है 850/— से 34019 रूपये कुल भूमि का बाजारी भाव होता है तथा उसमें निर्मित टीन शेड अनुमानित कीमत 42000 रूपये से कुल भवन व भूमि की बाजारी कीमत 76019 रूपये के होती है जो आंकी जानी उचित प्रतीत होती है। रिपोर्ट अग्रिम कार्यवाही हेतु प्रेषित है।"

However, the Additional District Magistrate (Finance & Revenue) Nainital estimated the value of the building to the extent of Rs. 5,18,400/- and of land 39,019 total Rs. 5,57,419.

7. The stamp duty was directed to be paid to the extent of Rs. 88,837/- and the petitioner having paid a sum of Rs. 10,150/- therefore, the stamp duty of Rs. 70,637.50 paise was due.

8. Grievance of the petitioner is that the aforesaid order was an exparte and no notice was served upon the petitioner and further no opportunity to contest the case was given to the petitioner. He went in revision and in the affidavit dated 2nd February, 1994, he has specifically asserted that he was never given any opportunity to contest the case. Paragraph Nos. 1, 2, 3 and 5 of the aforesaid affidavit are quoted below:

> "यह कि दिनांक 18–10–1993 का कोई नोटिस मुझे श्रीमान जी के न्यायालय का प्राप्त नहीं हुआ न दिनांक 18–10–1993 की तारीख की सूचना शपथकर्ता को किसी अन्य प्रकार से हुई।
>
> 2:– यह कि मुकदमा उपरोक्त का कोई नोटिस मुझे नहीं मिला।
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> 3:– यह कि मुकदमा उपरोक्त में शपथकर्ता को अपना पक्ष रखने का अवसर प्रदान किया जाना व मुकदमें की सुनवाई गुणदोष के आधार पर होना आवश्यक है।
>
> 5:– यह कि दिनांक 11–1–1994 में 20–1–1994 तक सर्दी, बुखर से पीड़ित रही।"

9. However, the revisional Court without looking the grievance of the petitioner and without considering the affidavit of the petitioner dismissed the revision.

10. A perusal of the order passed by the Additional District Magistrate shows that according to the report of the Tehsildar, the premises in dispute is being used for commercial purposes, whereas the petitioner has a grievance that the property has been purchased for residential purposes.

11. In view of the aforesaid facts, admittedly, the petitioner has not been heard at any stage of the proceedings, therefore, in the interest of Justice, let the opportunity be given to the petitioner to file the reply of the notice issued under Section 47-A (2) of the Indian Stamps Act permitting the petitioner to lead the evidence in support of his case.

12. The need of society is that there should be justice oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has held in ***(2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood as under:-***

> *"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."*

13. Consequently, a writ of certiorari is issued quashing the order –dated 14.08.1996 and the matter is sent back to the respondent no. 2. The Additional District Magistrate shall decide the matter in accordance with law.

14. Writ petition is allowed. No order as to costs.

((Rajesh Tandon, J.)

19.05.2006
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